

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BOBBY JAMES WILLIAMS,

Petitioner,

vs.

WILLIAM KNIPP, Warden,

Respondent.

Civil No. 13cv2690-JAH(KSC)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Bobby James Williams, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A).

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his conviction in San Diego Superior Court Case No. SCD114531. On September 19, 2005, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in Case No. 05cv1823. In that petition, Petitioner challenged his conviction in San Diego Superior Court Case No. SCD114531 as well. (*See* Petition filed Sept. 19, 2005 in Case No. 05cv1823-JM(JMA), ECF No. 1 at 5, 42.) On September 22, 2006, this Court dismissed that petition as time barred. (*See* Order filed Sept. 22, 2006 in Case No. 05cv1823-JM(JMA), ECF No. 31.) Petitioner has not appealed that determination.

1 Petitioner now seeks to challenge the same conviction he challenged in his prior federal
2 habeas petition. Unless a petitioner shows he or she has obtained an Order from the appropriate
3 court of appeals authorizing the district court to consider a successive petition, the petition may
4 not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A); Murray v. Greiner, 394 F.3d
5 78 (2d Cir. 2005) (holding that dismissal for failure to comply with the one-year statute of
6 limitations renders subsequent petitions challenging the same conviction or sentence "second or
7 successive" under 28 U.S.C. § 2244(b); Reyes v. Vaughn, 276 F.Supp.2d 1027, 1029 (C.D. Cal.
8 2003) (same). Here, there is no indication the Ninth Circuit Court of Appeals has granted
9 Petitioner leave to file a successive petition.

10 **CONCLUSION**

11 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
12 Court of Appeals to file a successive petition, this Court cannot consider this Petition.
13 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
14 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. The
15 Clerk of Court shall forward for Petitioner's convenience a blank Ninth Circuit Application for
16 Leave to File Second or Successive Petition along with a copy of this Order.

17 **IT IS SO ORDERED.**

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19 DATED: November 14, 2013

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21 HON. JOHN A. HOUSTON
 United States District Judge

22 CC: ALL PARTIES
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